Supreme Court, U.S.
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No. 92-1694

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1992

JEROME SUMLIN

Petitioner,

versus

SEAHAWK MANAGEMENT, INCORPORATED

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether a seaman should be exempted from the established rule that litigants are bound by the actions of their attorneys.

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RULE

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STATEMENT OF THE CASE

On December 14, 1989, the Petitioner-Plaintiff filed this action in the United States District Court for the Southern District of Alabama, Southern Division. The Plaintiff, a seaman, made claims for damages under the Jones Act and the general maritime law. The district court established a cutoff date for discovery of November 26, 1990. On February 7, 1991, the district court granted a motion by the Defendant for sanctions against Plaintiff as a result of Plaintiff's failure to sufficiently answer interrogatories which were propounded on or about May 23, 1990.

Thereafter, the district court found the Plaintiff continuing to disregard orders of the court and time requirements imposed under the governing procedural rules.[1] The district court

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[1]April 25, 1991 Memorandum Opinion of William E. Cassady, Magistrate Judge of the United States District Court for the Southern District of Alabama, Southern Division.

accordingly dismissed Plaintiff's action with prejudice as such was "the only viable sanction that meets the objectives of preventing unfair prejudice to the defendant and protecting the integrity of this court." The court's findings included that the "*plaintiff* and his attorney have, in bad faith, disregarded the Federal Rules of Civil Procedure and the Orders of this Court causing delay as well as prejudice to the defendant's ability to mount a defense." (Emphasis added).

SUMMARY OF THE ARGUMENT

It is Respondent's position that the Petitioner's status as a seaman is entirely irrelevant to the district court's ruling. The dismissal of Petitioner's action in no way ignores, limits or casts doubt on a seaman's station as a ward of the admiralty.

Without question, seamen are afforded a special protection by the admiralty courts. But that protection operates to shield ignorant seamen from the sophisticated overreaching of their adversaries, i.e., vessel owners and employers, not the errors of their agents.

This case does not involve a seaman who has been duped by the misdeeds of a sophisticated adversary. To the contrary, Petitioner bases his argument on the relationship between a seaman and his advocate. Clearly, the special protection afforded seamen to which the Petitioner refers is in no manner engaged by the facts of this case.

The well-established rule is that litigants bear the risk of errors made by their attorneys. That the Petitioner is not exempted from this rule does not frustrate the protection which is concededly afforded seamen.

With respect to Petitioner's position that he has been punished for the actions of his attorney in unrelated instances, the district court's conclusion makes clear that such is not the case.

Finally, Petitioner has failed to demonstrate any of the reasons to review this case on writ of certiorari which are characterized under the governing procedural rules of this Court.

ARGUMENT

This Court has expressly established that litigants bear the risk of errors made by their attorneys. Irwin v. Veterans Administration, 498 U.S. ___, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990); Murray v. Carrier, 477 U.S. 478, 488 (1986); Link v. Wabash R.R. Co., 370 U.S. 626, 633-34 (1962). In Irwin, the Court declared:

> Under our system of representative litigation, "each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'"

Irwin, 498 U.S. at ___, 111 S.Ct. at 456, 112 L.Ed.2d at 442 (quoting Link, supra (quoting Smith v. Ayer, 101 U.S. 320 (1990))). Petitioner seeks to be exempted from that rule, relying on the special protection afforded seamen. Petitioners' reliance is manifestly misplaced.

Respondent, of course, does not dispute that seaman are benefactors of a protecting

hand from the admiralty courts. However, the perils from which seamen are shielded are clearly not brought to bear in this case. As illustrated in the cases cited by Petitioner, the admiralty courts protect seamen from overreaching by their employers and vessel owners. Factors from which this paternalistic attitude has arisen include the "rashness and credulity" of seamen and "the particularly authoritarian relationship of ship owners and their representatives to seamen." Lampsis Navigation Ltd. v. Ortiz de Cortez, 694 F.2d 934, 936 (2d Cir. 1982). The protection, then, arises from the nature of the adversarial relationship between the stereotypically ignorant seaman and the stereotypically sophisticated vessel owner.

The classic case in which protection is afforded is where a vessel owner has extracted a release from a seaman without ensuring that

the seaman fully comprehends the ramifications of his action. In Garrett v. Moore-McCormack Co., 317 U.S. 239, 246-47 (1942), this Court refused to apply state burden of proof standards relating to the validity of a release, declaring that,

> [t]he burden is on one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights.

Garrett, 317 U.S. at 246.

The numerous other cases cited by Petitioner are merely cumulative on this point. That is to say, Petitioner cites cases which illustrate that the protection afforded to seamen is protection from overreaching by sophisticated vessel owners.

In this petition, there exists not even an allegation of overreaching. There is no release, no settlement, nor any other factor which might indicate that the Petitioner has

been duped by the Respondent. The cases cited by Petitioner are inapposite.

At issue here is not the adversarial relationship between a seaman and his employer, which due to the purported ignorance of seamen is concededly different from other litigant-employer relationships. The relationship which is the subject of this petition is the agency relationship between a seaman and his attorney. Respondent submits that this relationship is in no manner different from any other attorney-client relationship. None of the factors which compel the introduction of a special protection into the seaman-employer relationship are present in a seaman's relationship with his attorney. Petitioner's status as a "seaman", then, is not grounds on which to exempt him from the rule that all litigants must bear the risk of errors made by their attorneys.

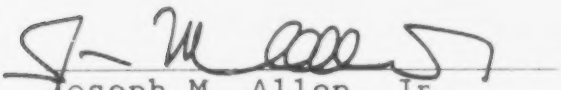
With respect to Petitioner's position that he was punished for his attorney's actions in unrelated cases, this is contradicted by the conclusion of the district court. Therein, the district court stated that "the extreme sanction of dismissal with prejudice is the appropriate sanction" because the "*plaintiff* and his attorney have, in bad faith, disregarded the Federal Rules of Civil Procedure and the Orders of this Court." (Emphasis added).

Finally, Rule 10 of the Supreme Court Rules characterizes the considerations governing the determination of whether to accept review on writ of certiorari. The petitioner has failed to demonstrate the presence of any of these considerations.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari is due to be denied.

Respectfully submitted,



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